

Senate File 360 - Introduced

SENATE FILE 360
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1229)

A BILL FOR

1 An Act relating to mechanic's liens and the mechanics' notice
2 and lien registry.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 572.8, subsection 1, paragraphs b and e,
2 Code 2013, are amended to read as follows:

3 b. The legal description ~~of~~ that accurately describes the
4 property to be charged with the lien.

5 e. The ~~tax~~ parcel identification number required by law to
6 be assigned to the property for real estate tax administration
7 purposes.

8 Sec. 2. Section 572.11, Code 2013, is amended to read as
9 follows:

10 **572.11 Extent of lien posted after ninety days.**

11 Liens perfected under section 572.10 shall be enforced
12 against the property or upon the bond, if given, by the owner
13 or by the owner-builder's buyer, only to the extent of the
14 balance due from the owner to the general contractor or from
15 the owner-builder's buyer to the owner-builder at the time of
16 the service of such notice; but if the bond was given by the
17 general contractor or owner-builder, or person contracting with
18 the subcontractor ~~filing~~ posting the claim for a lien, such
19 bond shall be enforced to the full extent of the amount found
20 due the subcontractor.

21 Sec. 3. Section 572.13A, subsections 1 and 2, Code 2013, are
22 amended to read as follows:

23 1. A general contractor, or owner-builder who has
24 contracted or will contract with a subcontractor to provide
25 labor or furnish material for the property, shall post a
26 notice of commencement of work to the mechanics' notice and
27 lien registry internet website ~~within~~ no later than ten days
28 ~~of~~ after the commencement of work on the property. A notice
29 of commencement of work is effective only as to any labor,
30 service, equipment, or material furnished to the property
31 subsequent to the posting of the notice of commencement of
32 work. A notice of commencement of work shall include all of
33 the following information:

34 a. The name and address of the owner.

35 b. The name, address, and telephone number of the general

1 contractor or owner-builder.

2 c. The address of the property or a description of the
3 location of the property if the property cannot be reasonably
4 identified by an address.

5 d. The legal description ~~of~~ that accurately describes the
6 property to be charged with the lien.

7 e. The date work commenced.

8 f. The ~~tax~~ parcel identification number required by law to
9 be assigned to the property for real estate tax administration
10 purposes.

11 g. Any other information prescribed by the administrator
12 pursuant to rule.

13 2. If a general contractor or owner-builder fails to
14 post the required notice of commencement of work to the
15 mechanics' notice and lien registry internet website pursuant
16 to subsection 1, ~~within~~ no later than ten days ~~of~~ after the
17 commencement of the work on the property, a subcontractor may
18 post the notice in conjunction with the ~~filing~~ posting of the
19 required preliminary notice pursuant to section 572.13B. A
20 notice of commencement of work must be posted to the mechanics'
21 notice and lien registry internet website before preliminary
22 notices pursuant to section 572.13B may be posted.

23 Sec. 4. Section 572.13A, subsection 3, paragraph c, Code
24 2013, is amended to read as follows:

25 c. The notice described in subsection 1 shall be sent to
26 the owner's address as posted to the mechanics' notice and
27 lien registry by the general contractor, owner-builder, or
28 subcontractor. ~~If the owner's address is different than the~~
29 ~~property address, a copy of the notice shall also be sent to~~
30 ~~the property address, addressed to the owner.~~

31 Sec. 5. Section 572.13A, subsection 3, Code 2013, is amended
32 by adding the following new paragraph:

33 NEW PARAGRAPH. d. Notices under this section shall not be
34 sent to owner-builders.

35 Sec. 6. Section 572.13B, subsection 1, paragraphs g and i,

1 Code 2013, are amended to read as follows:

2 *g.* The legal description ~~of~~ that accurately describes the
3 property to be charged with the lien.

4 *i.* The ~~tax~~ parcel identification number required by law to
5 be assigned to the property for real estate tax administration
6 purposes.

7 Sec. 7. Section 572.13B, subsection 2, Code 2013, is amended
8 to read as follows:

9 2. At the time a preliminary notice is posted to the
10 mechanics' notice and lien registry, the administrator shall
11 send notification to the owner, including the owner notice
12 described in section 572.13, subsection 1, and shall ~~docket~~
13 post the mailing of the notice on the mechanics' notice and
14 lien registry as prescribed by the administrator pursuant
15 to rule. Notices under this section shall not be sent to
16 owner-builders. Upon request, the administrator shall provide
17 ~~an affidavit of mailing~~ proof of service at no cost for the
18 notice required under this section.

19 Sec. 8. Section 572.15, Code 2013, is amended to read as
20 follows:

21 **572.15 Discharge of mechanic's lien — bond.**

22 A mechanic's lien may be discharged at any time by submitting
23 a bond to the administrator in twice the amount of the sum
24 for which the claim for the lien is ~~filed~~ posted, with surety
25 or sureties, to be approved by the administrator, conditioned
26 for the payment of any sum for which the claimant may obtain
27 judgment upon the claim.

28 Sec. 9. Section 572.19, Code 2013, is amended to read as
29 follows:

30 **572.19 Priority over garnishments of the owner.**

31 Mechanics' liens shall take priority ~~of~~ over all
32 garnishments of the owner for the contract debts, whether made
33 prior or subsequent to the commencement of the furnishing of
34 the material or performance of the labor, without regard to the
35 date of ~~filing~~ posting the claim for such lien.

1 Sec. 10. Section 572.22, unnumbered paragraph 1, Code 2013,
2 is amended to read as follows:

3 ~~The administrator shall endorse upon every claim for a~~
4 ~~mechanic's lien posted to the mechanics' notice and lien~~
5 ~~registry internet website the date and hour of posting.~~

6 Each claim posted to the mechanics' notice and lien registry
7 internet website shall be properly indexed and shall contain
8 the following items:

9 Sec. 11. Section 572.22, subsections 5 and 6, Code 2013, are
10 amended to read as follows:

11 5. The legal description ~~of~~ that accurately describes the
12 property to be charged with the lien.

13 6. The ~~tax~~ parcel identification number ~~of the property to~~
14 ~~be charged~~ required by law to be assigned to the property for
15 real estate tax administration purposes.

16 Sec. 12. Section 572.23, Code 2013, is amended to read as
17 follows:

18 **572.23 Acknowledgment of satisfaction of claim.**

19 1. When a mechanic's lien is satisfied by payment of the
20 claim, the claimant shall acknowledge post to the mechanics'
21 notice and lien registry an acknowledgment of satisfaction
22 ~~thereof of claim~~ and, if the claimant neglects to do so for
23 thirty days after demand in writing is personally served upon
24 the claimant, the claimant shall forfeit and pay twenty-five
25 dollars to the owner, general contractor, or owner-builder and
26 be liable to any person injured to the extent of the injury.

27 2. If ~~satisfaction is not acknowledged~~ an acknowledgment of
28 satisfaction of claim is not posted to the mechanics' notice
29 and lien registry within thirty days after service of the
30 demand in writing, the party serving the demand or causing the
31 demand to be served may ~~file for record with the administrator~~
32 post to the mechanics' notice and lien registry a copy of
33 the demand with proofs of service attached and endorsed and,
34 in case of service by publication, a personal affidavit that
35 personal service could not be made within this state. Upon

1 completion of the requirements of this subsection, the ~~record~~
2 posting shall be constructive notice to all parties of the
3 due forfeiture and cancellation of the lien. Upon the ~~filing~~
4 posting of the demand with the required attachments, the
5 administrator shall mail a date-stamped copy of the demand to
6 both parties.

7 Sec. 13. NEW SECTION. **572.23A Partial satisfaction of money**
8 **debt after posting notice.**

9 1. A general contractor or subcontractor shall post an
10 acknowledgment of partial satisfaction of a money debt to the
11 mechanics' notice and lien registry for material, labor, and
12 equipment furnished by the general contractor or subcontractor.

13 2. If an acknowledgment of partial satisfaction pursuant
14 to subsection 1 is not posted to the mechanic's notice and
15 lien registry within thirty days after receipt of written
16 demand from the owner, general contractor, or owner-builder,
17 the owner, general contractor, or owner-builder may post an
18 acknowledgment of partial satisfaction of the money debt and a
19 copy of the written demand to the mechanics' notice and lien
20 registry.

21 3. This section applies in situations where the required
22 notices pursuant to sections 572.13A and 572.13B have been
23 posted to the mechanics' notice and lien registry but a
24 mechanic's lien has not been posted.

25 Sec. 14. Section 572.28, subsection 1, Code 2013, is amended
26 to read as follows:

27 1. Upon the written demand of the owner served on the
28 ~~lienholder~~ claimant requiring the ~~lienholder~~ claimant to
29 commence action to enforce the lien, such action shall be
30 commenced within thirty days thereafter, or the lien and all
31 benefits derived therefrom shall be forfeited.

32 Sec. 15. Section 572.30, subsection 2, Code 2013, is amended
33 to read as follows:

34 2. Within fifteen days after receiving notice of nonpayment
35 the general contractor or owner-builder gives a bond ~~or makes~~

1 ~~a deposit with the administrator~~, in an amount not less than
2 the amount necessary to satisfy the nonpayment for which notice
3 has been given under this section, and in a form approved
4 by ~~a judge of the district court~~ the administrator, to hold
5 harmless the owner or person having the improvement made from
6 any claim for payment of anyone furnishing labor or material
7 for the improvement, other than the general contractor or
8 owner-builder.

9 Sec. 16. Section 572.31, Code 2013, is amended to read as
10 follows:

11 **572.31 Cooperative and condominium housing.**

12 A lien arising under this chapter as a result of the
13 construction of an apartment house or apartment building which
14 is owned on a cooperative basis under chapter 499A, or which is
15 submitted to a horizontal property regime under chapter 499B,
16 is not enforceable, notwithstanding any contrary provision of
17 this chapter, as against the interests of an owner in a unit
18 contained in the apartment house or apartment building acquired
19 in good faith and for valuable consideration, unless a lien
20 statement specifically describing the unit is ~~filed~~ posted
21 under section 572.8 within the applicable time period specified
22 in section 572.9, but determined from the date on which the
23 last of the material was supplied or the last of the labor was
24 performed in the construction of that unit.

25 Sec. 17. Section 572.33A, Code 2013, is amended to read as
26 follows:

27 **572.33A Liability of owner to general contractor —**
28 **commercial construction.**

29 1. An owner of a building, land, or improvement upon which
30 a mechanic's lien of a subcontractor may be ~~filed~~ posted, is
31 not required to pay the general contractor for compensation
32 for work done or material furnished for the building, land,
33 or improvement until the expiration of ninety days after the
34 completion of the building or improvement unless the general
35 contractor furnishes to the owner one of the following:

1 ~~1.~~ a. Receipts and waivers of claims for mechanics' liens,
2 signed by all persons who furnished material or performed labor
3 for the building, land, or improvement.

4 ~~2.~~ b. A good and sufficient bond to be approved by the
5 owner, conditioned that the owner shall be held harmless from
6 any loss which the owner may sustain by reason of the ~~filing~~
7 posting of mechanics' liens by subcontractors.

8 2. This section applies only to commercial construction
9 properties.

10 Sec. 18. Section 572.34, Code 2013, is amended to read as
11 follows:

12 **572.34 Mechanics' notice and lien registry —~~residential~~**
13 **construction.**

14 1. A mechanics' notice and lien registry is created and
15 shall be administered by the administrator. The administrator
16 shall adopt rules pursuant to chapter 17A for the creation and
17 administration of the registry.

18 2. The mechanics' notice and lien registry shall be
19 accessible to the general public through the administrator's
20 internet website.

21 3. a. The administrator shall index the legal descriptions
22 of the properties for which notices and liens are posted to
23 the registry. For the purpose of performing a search of the
24 registry the legal description shall be the controlling index
25 category.

26 b. The registry shall be indexed by owner name, general
27 contractor name, mechanics' notice and lien registry number,
28 property address, legal description, ~~tax~~ parcel identification
29 number required by law to be assigned to the property for real
30 estate tax administration purposes, and any other identifier
31 considered appropriate as determined by the administrator
32 pursuant to rule.

33 ~~4. A general contractor, owner-builder, or subcontractor~~
34 Any person who posts fictitious, forged, or false information
35 to the mechanics' notice and lien registry shall be subject

1 to a penalty as determined by the administrator by rule in
2 addition to all other penalties and remedies available under
3 applicable law.

4 5. A person may post a correction statement with respect
5 to a record indexed ~~in~~ on the mechanics' notice and lien
6 registry internet website if the person believes the record is
7 inaccurate or wrongfully posted.

8 6. The administrator shall charge and collect fees as
9 established by rule necessary for the administration and
10 maintenance of the registry and the registry's internet
11 website. The administrator shall not charge a filing posting
12 fee for a preliminary notice required pursuant to this chapter
13 that exceeds the cost of sending such notice by certified mail
14 with restricted delivery and return receipt. The administrator
15 shall not charge a filing posting fee for a mechanic's lien
16 that exceeds forty dollars.

17 7. Notices ~~may~~ shall be posted to the mechanics' notice and
18 lien registry electronically on the administrator's internet
19 website, ~~or may be sent to the administrator for posting~~
20 ~~by United States mail or facsimile transmission, or other~~
21 ~~alternate method as provided by the administrator pursuant to~~
22 ~~rule. Notices received by United States mail or facsimile~~
23 ~~transmission shall be posted by the administrator to the~~
24 ~~mechanics' notice and lien registry within three business days~~
25 ~~of receipt.~~

26 8. Mechanics' liens ~~may~~ shall be posted to the mechanics'
27 notice and lien registry electronically on the administrator's
28 internet website ~~or may be sent to the administrator for~~
29 ~~posting by United States mail. Liens received by United States~~
30 ~~mail shall be posted by the administrator to the mechanics'~~
31 ~~notice and lien registry within three business days of receipt.~~

32 9. ~~The administrator shall send a receipt acknowledging a~~
33 ~~notice or lien submitted by United States mail or facsimile~~
34 ~~transmission, as provided by the administrator by rule.~~

35 9. The posting of a notice or a lien to the mechanics'

1 notice and lien registry internet website pursuant to this
 2 chapter, along with the tender of the requisite filing fees and
 3 the sending of an acknowledgment receipt by the administrator,
 4 is equivalent to a filing and recording of the appropriate
 5 notice or lien in the county in which the real estate is
 6 located.

7 10. Information collected by and furnished to the
 8 administrator in conjunction with the submission and posting of
 9 notices pursuant to sections 572.13A and 572.13B shall be used
 10 by the administrator solely for the purposes of the mechanics'
 11 notice and lien registry.

12 11. Registration under chapter 91C shall not be required in
 13 order to post a notice or a lien under this chapter.

14 12. A preliminary notice that remains posted on the
 15 mechanics' notice and lien registry internet website two
 16 years after the date of posting shall be declared inactive by
 17 the administrator, unless renewed. A notice of commencement
 18 of work, if there are no related active postings, shall be
 19 declared inactive two years from the date of posting, unless
 20 renewed. The administrator shall establish a process for the
 21 removal of inactive notices and for the renewal of notices
 22 pursuant to rule.

23 ~~12.~~ 13. The administrator shall make, or cause to be made,
 24 preservation duplicates of mechanics' notice and lien registry
 25 records, including records stored in a computer database. Any
 26 preservation duplicate record shall be accurate, complete, and
 27 clear, and shall be made, preserved, and made accessible to the
 28 public by means designated by the administrator by rule.

29 EXPLANATION

30 This bill makes conforming language corrections relating
 31 to the posting of precommencement and preliminary notices and
 32 mechanic's liens on the mechanics' notice and lien registry
 33 (registry) and related civil enforcement actions, to be
 34 consistent with changes made in HF 675 (2012).

35 The bill also amends provisions relating to certain property

1 information required for precommencement and preliminary
2 notices.

3 The bill specifies that general contractors and
4 owner-builders do not have to send precommencement notices to
5 owner-builders.

6 The bill requires the administrator (secretary of state) to
7 provide proof of service for notices posted on the registry and
8 eliminates the requirement that the administrator endorse every
9 claim for a mechanic's lien posted on the registry.

10 The bill specifies that each claim posted to the
11 registry internet website shall be properly indexed by the
12 administrator, and shall include items including the name
13 of the person who posted the claim, the date and hour of
14 the posting, and the amount of the claim. The bill makes
15 changes to the registry indexing requirements and requires the
16 administrator to index the legal descriptions of the properties
17 for which notices and liens are posted to the registry.

18 The bill provides that when a mechanic's lien is satisfied
19 by payment of the claim, the claimant must acknowledge
20 satisfaction by posting an acknowledgment of the satisfaction
21 to the registry. If such an acknowledgment is not posted to
22 the registry within 30 days after service of the demand in
23 writing, the party serving the demand may post a copy of the
24 demand to the registry.

25 The bill provides that a general contractor or subcontractor
26 shall post an acknowledgment of partial satisfaction of a money
27 debt to the mechanics' notice and lien registry for material,
28 labor, and equipment furnished by the general contractor or
29 subcontractor. If an acknowledgment of partial satisfaction
30 is not posted to the registry within 30 days after receipt
31 of written demand from the owner, general contractor, or
32 owner-builder, the owner, general contractor, or owner-builder
33 may post an acknowledgment of partial satisfaction of the money
34 debt and a copy of the written demand to the mechanics' notice
35 and lien registry. This provision applies in situations where

1 the required notices pursuant to Code sections 572.13A and
2 572.13B have been posted to the mechanics' notice and lien
3 registry but a mechanic's lien has not been posted.

4 The bill provides that in a civil action by a subcontractor
5 or owner against a general contractor or owner-builder, a
6 bond given by a general contractor or owner-builder shall be
7 approved by the administrator instead of the court.

8 The bill provides that the posting by any person of
9 fictitious, forged, or false information to the registry is
10 subject to a penalty as determined by the administrator.

11 The bill provides that precommencement and preliminary
12 notices and mechanic's liens shall be posted to the mechanics'
13 notice and lien registry electronically on the administrator's
14 internet website.

15 The bill provides that the posting of a notice or a lien
16 to the mechanics' notice and lien registry internet website
17 along with the requisite filing fees and the sending of an
18 acknowledgment receipt by the administrator is equivalent to a
19 filing and recording of the appropriate notice or lien in the
20 county in which the real estate is located.

21 The bill provides that a preliminary notice that remains
22 posted on the mechanics' notice and lien registry internet
23 website two years after the date of posting shall be declared
24 inactive by the administrator, unless renewed. A commencement
25 of work, if there are no related active postings, shall be
26 declared inactive two years from the date of posting, unless
27 renewed. The administrator is also required to establish a
28 process for the removal of inactive notices and for the renewal
29 of notices pursuant to rule.